Supreme Court, U.S.
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No.'s 91-744 and 91-902

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

PLANNED PARENTHOOD OF SOUTHEASTERN PENNSYLVANIA, et. al.,

Petitioners,

v.

CASEY, et. al.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

Brief of Texas Black Americans for Life as Amicus Curiae in Support of Respondents Casey, et. al.

Lawrence J. Joyce
Counsel of Record

Craig H. Greenwood
Of Counsel

6203 N. Keeler Ave.
Chicago, IL 60646
(312) 286-7986

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INTEREST OF THE AMICUS

The *amicus* Texas Black Americans for Life is an organization which is concerned about the use of abortion as a tool of racial genocide against the African-American community.

ARGUMENT

We wish to advise the Court that if it does not dispose of this case in a manner which recognizes the sovereign right of the states to protect prenatal human life, certain members of Congress will introduce the so-called "Freedom of Choice Act" to override the states' interest in establishing protection for the unborn. Professor Laurence Tribe of Harvard University is on record as declaring that the authority to enact such a statute would fall within the scope of the Interstate Commerce Clause.

The State of Illinois, however, provides by statute, in an operative provision of law, that prenatal human offspring are persons; it also expressly provides that if *Roe v. Wade* is ever overruled, the law of the state shall automatically operate to protect the unborn against abortion unless the mother's life is endangered. I.R.S. Chapter 38, Para. 81-21.

As this Court has already noted, the states have a sovereign right to endow all those subject to their jurisdictions with legal rights and interests for purposes of state law. This Court recognized as much even as it was denying federal personhood to black slaves in its infamous *Dred Scott* decision. 60 U.S. (19 How.) 393, 405, 426 (1857).

To hold, as this Court did in *Roe*, that the states may not now do so is to say that *Dred Scott* went too far to the extent that it *would* allow a person to have rights under the law. *Roe* also states by the same logic that *Dred Scott did not go far enough* in denying persons the ability to have their rights recognized and protected under the law. And the state-

ment of this Court in *Roe* that this is somehow accomplished by the Fourteenth Amendment, which (along with the Thirteenth and Fifteenth Amendments) was designed to bury *Dred Scott* in a crossroad at midnight with a stake driven through its heart, is a statement which is untenable on its face.

Thus, given the chance that Congress will eventually pass some version of the Freedom of Choice Act, if this Court does not overrule *Roe* and simultaneously mention the sovereign right of the states to endow whomsoever they choose with legal rights and interests for purposes of state law, this Court will allow a needless constitutional clash to ensue. It would be in the best interests of federalism, comity, and judicial economy to state beforehand what the basis is of the states' right to protect the unborn. Such a statement could prevent needless litigation over what can only eventually prove to be a vain exercise of authority by Congress. In this way it will be less likely that the people will be misled as to which direction our law is taking.

CONCLUSION

We ask this Court to recognize the sovereign (i.e. Tenth Amendment) right of the states to protect prenatal human life. We ask this Court to overrule *Roe v. Wade* in a manner which so recognizes state sovereignty.

Respectfully submitted,

Lawrence J. Joyce
Counsel of Record

Craig H. Greenwood
Of counsel
6203 N. Keeler Ave.
Chicago, IL 60646

(312) 286-7986